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Executive Office of Health and Human Services

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Memorandum

To: Boards of Health and Code Enforcement Agencies

From: Howard S. Wensley, MHO Director

Date: 1 /2/02

Re: Requirements for Testing Bathing Beaches by Operators of Semi-Public Beaches

Several Boards of Health have requested clarification concerning the statutory and regulatory testing requirements for operators of semi-public bathing beaches. Following is a description of these requirements based on the Department's review of M.G.L. c. 111, §SS, entitled An Act Relative to Minimum Standards for Public Bathing Waters, and the regulations promulgated pursuant to that Act, 105 CMR 445.000, entitled Minimum Standards for Bathing Beaches (State Sanitary Code Chapter VII).

The Act defines a semi-public bathing beach as follows:

"Semi-public bathing beach", a bathing beach used in connection with a hotel, motel, trailer park, campground, apartment house, condominium, country club, youth club, school, camp or other similar establishment where the primary purpose of the establishment is not the operation of the bathing beach, and where admission to the use of the bathing beach is included in the fee consideration paid or given for the primary use of the premises. A semi-public bathing beach shall also include a bathing beach operated and maintained solely for the use of members and guests of an organization that maintains such a bathing beach. MGL c. 111, §SS(a).

The Act states that an officer or an agent of a local board of health shall test, monitor and analyze all bathing waters within its municipality (MGL c. 111, §SS(c)(1)). Bathing water is defined as the water adjacent to any public or semi-public bathing beach (MGL c. 111, §SS(a)). Therefore, the law requires

that local boards of health or their authorized representative test all public and semi-public bathing beaches in its jurisdiction. However, the Act also states that the owners of semi-public bathing beaches shall be required to pay for the costs of testing, monitoring and analysis of bathing waters adjacent to such semi-public bathing beaches (MGL c. 111, §5S(g)). In order to facilitate this, the Act specifies that local boards of health may enter into contractual agreements with owners of semi-public bathing beaches where the local board of health conducts testing, monitoring and analysis of such bathing waters (MGL c. 111, §5S(h)).

Since the Act puts the responsibility for testing, monitoring and analysis on the board of health but requires the owner of the semi-public beach to pay for the costs related to the testing, monitoring and analysis, this testing and analysis at semi-public beaches can essentially occur in one of two ways: Either the board of health or its agent conducts the testing and bills the semi-public beach owner for its costs in conducting the testing, monitoring and analysis or the board of health can enter into a contractual agreement with the semi-public beach owner in which the semi-public beach owner hires an independent person or company, who is approved by the board of health, to do the sample collection, submit the sample to a laboratory for analysis and report the results to the board of health, in accordance with regulatory requirements. A semi-public beach owner may not conduct the testing, monitoring or analysis on his or her own to meet the requirements of the regulations. Such testing, monitoring and analysis must be conducted by the board of health, the board's agent, or an independent person or company approved by the board of health.

If you have any additional questions, please forward them to this office.